

## MICHIGAN CORPORATION & SECURITIES BUREAU

### RELEASE NO. 84-24

TO: ALL INTERESTED PARTIES

SUBJECT: Uniform Limited Offering Exemption

#### General Background

During the short period since the effectiveness of Rule 803.7, the Uniform Limited Offering Exemption ("ULOE"), several questions have arisen regarding the Bureau's interpretation of the Rule. Following are some of those questions and the Bureau response.

1. Q. Is the notice specified in Section (c) required if offers are made in Michigan but no sales?  
  
A. No filing is required unless sales are made in this state, but be aware that under Section 7 the exemption is applicable generally to offers and sales.
2. Q. If sales are made in another state and 30 days later the first sale is made in Michigan, when does the 15 days begin for the notice filing in Michigan?  
  
A. The first report is required within 15 days of the first sale in Michigan. The issuer may coordinate the filing dates with his federal filings so long as the first report filed in this state is within 15 days of the first Michigan sale.
3. Q. If 30 sales are made under a ULOE claim of exemption and a few months later the issuer wishes to make 10 additional sales in Michigan, can he sell the additional 10 under 402(b)(9)(D)(2)?  
  
A. No. Section 8 of Rule 803.7 prohibits combining ULOE exempt sales with the other exemption and Regulation D has a 6-month integration rule which the Bureau will apply.
4. Q. Section 401(b) excludes from the definition of "agent," persons effecting transactions exempt under Section 402(b). Does this exclusion apply to persons effecting transactions exempt under ULOE?  
  
A. Yes. ULOE will be interpreted by the Bureau as a transactional exemption and analogous to the other 402(b) exemptions. It should be noted that the exclusions from the definition in 402(b) applies only if no commissions are paid. If a commission is to be paid, registration is required but be aware that under Section 7(a)(i) of Rule 803.7 notice registration may be available.

5. Q. Section 7(a) provides that no commission may be paid to any person for soliciting any prospective purchaser in Michigan unless that person is properly registered as a broker-dealer, agent, finder or investment adviser. If an unregistered managing broker-dealer allocates a portion of a commission to a registered Michigan broker-dealer who solicits purchasers in Michigan, will the retention of part of the commission by the unregistered managing broker-dealer constitute a violation?
- A. Yes, unless the compensation received by the managing broker-dealer can be attributed to other than commissions for solicitation of prospective investors in this state.
6. Q. Does the Bureau adopt and endorse the interpretations of applicable rules of Regulation D indicated in the SEC Release No. 33-6455?
- A. Yes, except the answer to Question 56. In shared border situations, the Bureau reserves the right to decide on a case-by-case basis, whether the securities will in fact come to rest abroad.
7. Q. Does the Bureau endorse the interpretations presented in NASAA Reg D/ULOE Interpretive Bulletin #1 dated March 19, 1984?
- A. Yes.

Authority:

Act 265 of 1964, Section 413(f).

Signed by E. C. Mackey, Director  
Corporation & Securities Bureau  
Dated: May 29, 1984

- (3) A corporation purchases the assets and assumes the liabilities of a business trust or REIT in exchange for its stock. The trust or REIT is then terminated and the corporation stock distributed in liquidation to the beneficial owners of the trust or REIT. The transaction involving the exchange of assets for stock and the termination of the trust is subject to approval by a majority vote of the beneficial owners and is similar to the vote of shareholders in approving a corporate sale of the assets and dissolution.

Action or Interpretation:

In interpreting the statute, the Bureau has determined that the exemption from registration contained in Section 402(b)(19) is available in the above described fact situations. In each instance, the transaction is sufficiently analogous to those specified in Section 402(b)(19) that registration is not required for investor protection.

The Bureau will no longer issue no action letters or interpretive opinions in these fact situations. Requests for no action letters or interpretive opinions relating to Section 402(b)(19) must be accompanied by a statement of facts describing a situation different from those outlined above. Such requests should be addressed to the Examination Division of the Corporation and Securities Bureau and should be prepared in accordance with the Bureau's Release No. 81-3.

Authority:

Act 265 of 1964, Section 402(b)(19).

Signed by E. C. Mackey, Director  
Corporation & Securities Bureau  
Dated: July 26, 1982